



Commonwealth
of Massachusetts

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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

January 21, 2005

AO-05-01

Kendra Medville
The Tom Reilly Committee
P.O. Box 410139
Cambridge, MA 02141

Re: Contribution made by person signing check under power of attorney

Dear Ms. Medville:

This letter is in response to your December 14, 2004 request for an advisory opinion.

QUESTION

You have stated that the Tom Reilly Committee has received a \$500 contribution signed by a person acting under a power of attorney. You have asked if the contribution may be accepted.

ANSWER

Yes. The contribution would be considered to be from the person who granted the power of attorney, not the person who signed the check.

DISCUSSION

Contributions over \$50 may be accepted only if made by “written instrument” or by direct deposit. See M.G.L. c. 55, § 9. Section 9 defines the term “written instrument,” for contributions by check, to mean “a check on which the contributor is directly liable or which is written on a personal, escrow, trust, partnership, business or other account which represents or contains the contributor’s funds.”

A “power of attorney” is “an instrument authorizing another to act as one’s agent or attorney.” Black’s Law Dictionary, 4th edition (1971). The person who establishes and finances the account is the owner of the account and the funds in the account are his or her funds. A contribution from a person signing a check under a power of attorney should therefore be considered to be from the person who

created the account and authorized another to act on his or her behalf to make expenditures from the account.

In some situations, for example, where a person who for medical reasons will not be able to handle financial matters for an extended period of time, the owner of a personal account containing his or her funds may grant broad discretion to make expenditures and control the funds. The person who has been granted the power of attorney may make specific expenditures from the account, but cannot use the funds to make a “contribution” in his or her own name. In addition to being inconsistent with Section 9, such a contribution would also raise concerns under M.G.L. c. 55, § 10, which prohibits any person from “directly or indirectly” making a contribution in any manner for the purpose of disguising *the true origin* of a contribution. The “true origin” of a contribution from a person signing under a power of attorney is the owner of the account.

This opinion is issued solely within the context of the Massachusetts campaign finance law and is based on the representations made in your letter. Please contact us if you have further questions.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Sullivan". The signature is written in dark ink and is positioned to the left of a vertical line.

Michael J. Sullivan
Director

MJS:gb